IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Mat.Appeal.No. 178 of 2006()

(JUDGMENT AND DECREE DT. 8.4.2005 IN O.P.686/04
ON THE FILE OF THE FAMILY COURT, THIRUVALLA).

PETITIONER: APPELLANT/PETITIONER

SARAMMA V. JOSEPH, D/O. LATE V.T.JOSEPH,
VALLURIKKAL HOUSE, MAMANKARA, NILAMBOOR, MALAPPU-
RAM DIST., NOW R/AT. 150-BENNETT AVENUE, APART-
MENT 5 H, NEW YORK CITY, NEW YORK-10040, U.S.A.,
REP. BY HER P.A. HOLDER GEEVARGHESE GEORGE,
KIZHAKKECHERUVIL, PIRELESSERY, CHENGANNUR.

BY ADV. SMT.S.K.DEVI

RESPONDENTS: RESPONDENT

MATHEW K. GEORGE, S/O. LATE K.G.GEORGE,
KARUDAMANNIL HOUSE, KUMBLATHAMON P.O.,
VADASSERIKKARA VILLAGE, PATHANAMTHITTA DIST.

BY ADV. SRI.SUBHASH CYRIAC

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN, JJ.

Mat.Appeal No.178 of 2006

Dated 23rd March, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal is directed against the judgment and decree dated 8.4.2005 in O.P.No.686/04 on the file of the Family Court, Thiruvalla. The appellant is the petitioner before the Family Court. She filed O.P.(Div) No.67/01 before the District Court, Pathanamthitta seeking divorce. An ex parte decree was granted as per order dated 16.12.2002. Thereafter, it is seen from the proceedings that the ex parte order was set aside. By that time the Family Court at Thiruvalla was established and hence O.P.No.67/01 was transferred to the Family Court and renumbered as O.P.No.686/04. According to the appellant, she did not get any notice before the Family Court. A contention also is taken that she did not get any notice when the ex parte order was set aside. On the latter, we are afraid, the contention cannot be appreciated because on going through the records, it is seen that notice was served. May be the appellant could not appear. But that is a different matter. Be that as it may, it is seen from the order of the Family Court under appeal that both appellant as

well as the respondent were not present and hence the Original Petition was dismissed. Having heard the learned counsel on both sides, we are of the view that it is only in the interests of both the parties that the matter is considered afresh by the Family Court and an order is passed on merits. Accordingly, we set aside order dated 8.4.2005 in O.P.No.686/04 on the file of the Family Court, Thiruvalla with a direction to the said court to dispose of the Original Petition on merits, within a period of three months from the date of appearance of the parties. The parties will appear before the Family Court on 4.6.2007.

KURIAN JOSEPH, JUDGE.

K.T.SANKARAN, JUDGE.

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KURIAN JOSEPH & K.T.SANKARAN, JJ

L.A.A. NO. OF 2004

J U D G M E N T

Dated 8th March, 2007.